

41PR-7777

**REMARKS**

Claims 1 – 11 and 25 – 33 are pending in the present application. Claims 1, 9, and 30, have been amended, leaving Claims 1 – 11 and 25 – 33 for consideration upon entry of the present Amendment. The claims have been amended to correct informalities identified in the Final Rejection. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and the following remarks.

Objections

Claims 1, 9, and 30 have been amended to address informalities. Reconsideration and withdrawal of the objections are respectfully requested.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1 – 3, 5 – 7, 9 – 11, 25 – 28, and 30 – 32, stand rejected under 35 U.S.C. §103(a), as allegedly unpatentable over WO 00/21631 to Nazzari in view of EP 0098038 to Morgan. Claim 4 stands rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Nazzari in view of Morgan, and further in view of U.S. Patent No. 5,389,208 to Beasley et al. Claim 8 stands rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Nazzari in view of Morgan, and further in view of U.S. Patent No. 4,767,498 to Kreisler. Applicants respectfully traverse these rejections.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996). In applying Section 103, the U.S. Court of Appeals for the Federal Circuit has consistently held that one must consider both the invention and the prior art “as a whole”, not from improper hindsight gained from consideration of the claimed invention. See, *Interconnect Planning Corp. v. Feil*, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1985) and cases cited therein. According to the *Interconnect* court

[n]ot only must the claimed invention as a whole be evaluated, but so also must the references as a whole, so that their teachings are applied in the context of their

41PR-7777

significance to a technician at the time - a technician without our knowledge of the solution.

As stated in the reply to the Office Action dated April 13, 2004, Nazzer, alone and in combination with Morgan, Beasley et al., and/or Kreisler, fails to render the present claims obvious. The Examiner relies upon Nazzer to "substantially" disclose the claimed process with the claimed parameters allegedly being result effective variables. (Office Action dated April 13, 2004 (hereinafter "OA", pages 3 -- 4). Applicants respectfully disagree that Nazzer substantially discloses the presently claimed process, that the process variables are result effective, and that a combination of Nazzer with Morgan, Beasley et al., and/or Kreisler, is obvious, or that this combination cures the deficiencies of Nazzer.

To teach the present application, the Examiner points to Nazzer, pages 5 -- 6, stating that Applicants' arguments are not persuasive because:

...it is also desirable... to flash off unwanted vapors and separate out unwanted non-miscible liquids from the feedstream 2 before it enters the flash separator 3; and the further disclosure at page 5, lines 29 -- 30 through page 6, lines 1 -- 2 of "... the feedstream and recycle liquor 6 may be mixed immediately upstream of the separator 3..." would at least be suggestive of...

decreasing the pressure of the heated brine during re-introduction of the pressurized, heated brine into the flash tank. (Final Rejection, page 4) However, Nazzer must be read as a whole, and the teaching thereof must be taken for what it teaches to one of ordinary skill in the art. As discussed in the prior response, Nazzer teaches

The feed stream 2 mixes with a larger and hotter stream of recycle liquor 6 that has entered the flash separator 3 at high velocity in the same rotational direction as the feed stream 2, as illustrated in Figure 1a. The recycle liquor 6 enters the flash separator through one or more tangential nozzles (not shown). The recycle liquor 6 preferably immediately heats the feed stream 2 and thereby causes the feed stream to boil rapidly or flash... The vapour 7 generated by the flashing feed stream 2 expands to fill the annular chamber 5...

(Page 5, line 23 -- 6, line 4) Nazzer is a different process, with different parameters, and different materials. As mentioned and relied upon by the Examiner, Nazzer does mention that "... the feedstream and recycle liquor 6 may be mixed immediately upstream of the separator 3...".

However, contrary to the Examiner's contention, there is no teaching or suggestion of decreasing

41PR-7777

the pressure of the heated brine during re-introduction of the pressurized, heated brine into the flash tank. When read as a whole, Nazzer actually teaches, to one of ordinary skill in the art, an alternative to the embodiment illustrated in the Figure where streams 2 and 6 are illustrated on opposite sides of the tank. This alternative, namely mixing "*immediately* upstream of the separator 3" suggests that the streams 2,6, may be introduced at the same point; the introduction point, i.e., "*immediately* upstream of the separator 3". This statement does not address pressure, but talks about a different introduction point. This point is identified as *immediately* upstream, and not a distance upstream, of separator 3. There is no reason for an artisan to find this teaching suggestive of (i) an introduction point a distance upstream; and (ii) a need to decrease the pressure of the stream as it enters the separator. Nazzer fails to teach that the streams are pressurized or that the pressure is reduced as the streams enter the separator. He only teaches moving the streams at a high velocity and at an angle to attain a desired rotational flow. (Page 5, line 19 -- Page 6, line 2)

In order for the teachings of Nazzer to provide the alleged "suggestion" relied upon by the Examiner, non-supported assumptions must be made. For example, "*immediately*" must be considered to mean a distance and not immediate to the point of introduction (no teaching, suggestion, or motivation). One must then assume that Nazzer has failed to teach all necessary steps of their method (possibly a non-enabling disclosure) since, one must assume that, if the streams were combined, the combined stream would need to be (and would be) under sufficient pressure to prevent flashing in the pipe (i.e., if the stream is of a sufficient temperature to cause flashing in the separator 3), and because the streams were assumedly being mixed a distance from (and not immediate), the separator 3. However, in the section relied upon for this suggestion, Nazzer does not mention pressurizing the stream in such a fashion. (no motivation to pressurize or to introduce a stream away from the introduction point).

Basically, Applicants remarks in the prior response were deemed unpersuasive due to the Examiner's contention that Nazzer's teaching was a suggestion of Applicants method, or of at least the step of "decreasing the pressure of the heated brine during re-introduction of the pressurized, heated brine into the flash tank by an amount effective to transform at least a portion of water from the brine from liquid to steam" (Claim 1). However, as can be seen from the above remarks, this teaching of Nazzer is not suggestive, when read as a whole based upon what

41PR-7777

it would teach one of ordinary skill in the art. Consequently, the present claims are not obvious in view of Nazzer.

It is further noted, that all of the rejections in the Final Rejection rely upon Nazzer as the primary reference. Therefore, since none of the references remedy the deficiencies of Nazzer discussed above, Nazzer, even in combination with the other references (e.g., EP 0098038 to Morgan, U.S. Patent No. 5,389,208 to Beasley et al., and/or U.S. Patent No. 4,767,498 to Kreisler), fails to render the present application obvious. For example, Nazzer fails to teach "decreasing the pressure of the heated brine during re-introduction of the pressurized, heated brine into the flash tank by an amount effective to transform at least a portion of water from the brine from liquid to steam" (Claim 1). The Examiner admits that "Beasley and Kreisler were... not [cited]... to disclose the step of '...decreasing the pressure...'". (Final Rejection, page 5) For at least these reasons and the reasons set forth in the prior response dated July 13, 2004, the present application is non-obvious over the art of record. Reconsideration and withdrawal of the rejections are respectfully requested.

#### Allowable Claims

Claims 29 and 33 are objected to as being dependent from a rejected base claim but are identified as allowable if rewritten in independent form. Applicants contend that the base claims are allowable over the art of record. Applicants have therefore reserved the right to place these claims in independent form.

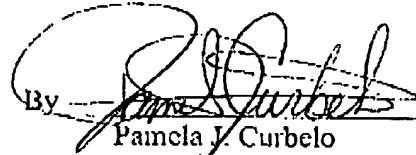
It is believed that the foregoing amendments and remarks fully comply with the Final Rejection and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and withdrawal of the objections and rejections and allowance of the case are respectfully requested.

41PR-7777

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

CANTOR COLBURN LLP

By   
Pamela J. Curbelo  
Registration No. 34,676

Date: February 24, 2005  
CANTOR COLBURN LLP  
55 Griffin Road South  
Bloomfield, CT 06002  
Telephone (860) 286-2929  
Facsimile (860) 286-0115  
Customer No.: 23413